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In the Supreme Court of the United States

OCTOBER TERM, 1997

CHASE MANHATTAN BANK, AS TRUSTEE OF THE IBM RETIREMENT PLAN TRUST FUND, PETITIONER

v.

CITY & COUNTY OF SAN FRANCISCO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the Tax Injunction Act (TIA), 28 U.S.C. 1341, bars the fiduciary of an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, from bringing an action in federal district court for injunctive or declaratory relief to challenge a state or local tax as preempted by ERISA.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. In 1986, the IBM Retirement Plan Trust Fund (the Plan) purchased an annuity contract from the Equitable Life Assurance Society of America (Equitable). Pet. App. 5. Pursuant to that contract, Equitable allocated a share of its interest in One Market Plaza Corporation, a joint venture that owned an office building located in San Francisco, into a separate account for the benefit of the Plan. *Id.* at 5, 58.

Respondent City and County of San Francisco deemed that transfer to be a change of ownership under California law, which allowed the office building to be reassessed at a higher value for tax purposes. *Id.* at 5. As a result, a substantial tax on the property was levied and paid. *Id.* at 19-20.

2. Petitioner Chase Manhattan Bank, as trustee to the Plan, filed suit for a declaratory judgment in federal district court, contending that the reassessment was preempted by Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144(a), which preempts state laws that "relate to" employee benefit plans. Pet. App. 5. Respondents moved to dismiss the suit as barred by the Tax Injunction Act (TIA), 28 U.S.C. 1341, which prohibits federal district courts from entertaining suits to "enjoin, suspend or restrain" the assessment or collection of a state or local tax unless no "plain, speedy and efficient remedy" exists in state court. Pet. App. 5.

The district court granted respondents' motion and dismissed the case. Pet. App. 62-65. The court, following then-Judge Kennedy's opinion in *Ashton* v. *Cory*, 780 F.2d 816 (9th Cir. 1986), concluded that ERISA was not intended to override the TIA and its "historic concern for state fiscal autonomy." Pet. App. 61-62. The court next concluded that petitioner had a "plain, speedy and efficient remedy" in state court, within the meaning of the TIA, because petitioner could cause the joint venture, as the taxpayer, to bring a refund suit in state court raising the preemption issue. *Id.* at 62-64. The court rejected petitioner's argument that the state courts would be barred from adjudicating the preemption issue by Section 502(e) of ERISA, 29 U.S.C. 1132(e), which

grants federal courts exclusive jurisdiction over any civil action under Title I of ERISA by the Secretary of Labor or "a participant, beneficiary, [or] fiduciary" of an ERISA plan. See Pet. App. 64-65.[1] The court, adopting Justice Scalia's suggestion as Circuit Justice in *Barnes* v. *E-Systems, Inc.*, 501 U.S. 1301 (1991), concluded that state courts may entertain claims for equitable or monetary relief based on the alleged invalidity under the Supremacy Clause of a state statute that violates ERISA. Pet. App. 65.

3. The Ninth Circuit affirmed in a per curiam decision. Pet. App. 1-10. The court adhered to circuit precedent holding that Section 502(e)'s grant of exclusive jurisdiction to the federal district courts over certain categories of ERISA claims "was not intended as an exception to the TIA." Pet. App. 6 (citing *Retirement Fund Trust of the Plumbing* v. *Franchise Tax Bd.*, 909 F.2d 1266, 1272 (9th Cir. 1990); *General Motors Corp.* v. *California State Bd. of*

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[1] Section 502(e) provides, in pertinent part, that "the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, [or] fiduciary." 29 U.S.C. 1132(e). The federal and state courts have concurrent jurisdiction, however, over actions by a participant or beneficiary to recover benefits under a plan, to enforce rights under a plan, or to clarify a right to future benefits under a plan. *Ibid.*

Section 502(e) also vests federal district courts with exclusive jurisdiction over claims by "any person referred to in section 1021(f)(1) of this title." The latter section imposes a duty on employers to report certain information related to Medicare and Medicaid, and a duty on plans, plan sponsors, or other entities with the necessary information to provide such information to the employer. 29 U.S.C. 1021(f)(1). That portion of Section 502(e) is not at issue in this case.

Equalization, 815 F.2d 1305, 1308 (9th Cir. 1987), cert. denied, 485 U.S. 941 (1988); *Ashton*, 780 F.2d at 822). Accordingly, unless the state courts do not afford a "plain, speedy and efficient" means to challenge a state or local tax as preempted by ERISA, no such challenge may be made in federal court. *Ibid.* The court found support for its approach in this Court's recent decision in *Arkansas* v. *Farm Credit Services*, 117 S. Ct. 1776 (1997), which emphasizes the TIA's broad reach and important purposes. Pet. App. 7-8.

The court of appeals acknowledged that the Second, Fifth, and Sixth Circuits, in contrast, have held that the TIA does not bar federal courts from adjudicating suits for injunctive or declaratory relief against the enforcement of a state or local tax that is claimed to be preempted by ERISA. Pet. App. 7 (citing *Travelers Ins. Co.* v. *Cuomo*, 14 F.3d 708, 714 (2d Cir. 1993), rev'd on other grounds *sub nom. New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645 (1995); *Thiokol Corp.* v. *Department of Treasury*, 987 F.2d 376, 380-381 (6th Cir. 1993), cert. denied, 117 S. Ct. 2448 (1997); *E-Systems, Inc.* v. *Pogue*, 929 F.2d 1100, 1102 (5th Cir.), cert. denied, 502 U.S. 981 (1991)). Those courts have reasoned that, because Section 502(e) vests the federal courts with exclusive jurisdiction over actions to enjoin violations of ERISA, the state courts cannot entertain ERISA-preemption challenges to state taxes and thus cannot provide a "plain, speedy and efficient remedy" under the TIA.

The court of appeals next concluded that petitioner had not met its burden under the TIA of establishing that it had no "plain, speedy and efficient remedy" in state court. Pet. App. 8-10. The court rejected the

argument that petitioner had no such remedy because the joint venture, not petitioner, was the taxpayer and only taxpayers may sue in state court to challenge the assessment of a tax. The court relied on this Court's holding in *Franchise Tax Board* v. *Alcan Aluminum Ltd.*, 493 U.S. 331, 339 (1990), that the TIA bars a suit by a party that controls an entity that could bring an action in state court to challenge a tax, even if the party could not bring such an action itself. Here, the court concluded that petitioner, as the trustee of an ERISA plan that owns an interest in the joint venture, appears to have sufficient control over the joint venture to cause it to bring suit in state court to challenge the tax assessment. Pet. App. 8.

Finally, the court of appeals rejected petitioner's argument that the joint venture would be barred from asserting an ERISA-preemption claim in state court by Section 502(e) of ERISA, which petitioner construed to mean that "only an ERISA participant, beneficiary or fiduciary may bring a claim of ERISA preemption, and then only in federal court." Pet. App. 9. The court instead construed Section 502(e) as requiring "only that actions under ERISA by specific entities—such as fiduciaries—be brought in federal court," without foreclosing other entities, such as the joint venture here, from bringing "ERISA-related actions" in state court. *Id.* at 9-10.

DISCUSSION

This Court's review of the court of appeals' decision in this case is warranted in order to resolve an important issue of federal jurisdiction that has divided the circuits for some time. The United States therefore supports the grant of the petition for a writ of certiorari. We believe, however, that the court of appeals

correctly held that the Tax Injunction Act (TIA), 28 U.S.C. 1341, barred the district court from entertaining petitioner's claim that the tax at issue was preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*

1. The TIA provides that "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. 1341. The TIA applies to actions for declaratory as well as injunctive relief. *California* v. *Grace Brethren Church*, 457 U.S. 393, 411 (1982); cf. *Fair Assessment in Real Estate Ass'n* v. *McNary*, 454 U.S. 100 (1981) (comity concerns similar to those underlying TIA bar federal courts from entertaining damages actions arising out of assessment of state taxes). Accordingly, in order to overcome the bar posed by the TIA to an ERISA-based challenge in federal district court to a state or local tax, a party "would have to show either that state law provided no 'speedy and efficient remedy' or that Congress intended § 502 of ERISA to be an exception to the [TIA]." *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 20 n.21 (1983).

The Ninth Circuit concluded that neither basis for avoiding application of the TIA was present in this case. First, the court held that Section 502(e) of ERISA, 29 U.S.C. 1132(e) — which grants the district courts exclusive jurisdiction over civil actions under ERISA by plan fiduciaries, participants, and beneficiaries—is not an exception to the TIA. Pet. App. 6-7; accord *Retirement Fund Trust of the Plumbing* v. *Franchise Tax Bd.*, 909 F.2d 1266, 1272 (9th Cir. 1990); *General Motors Corp.* v. *California*

State Bd. of Equalization, 815 F.2d 1305, 1308 (9th Cir. 1987) (Kennedy, J.), cert. denied, 485 U.S. 941 (1988); *Ashton* v. *Cory*, 780 F.2d 816, 822 (9th Cir. 1986) (Kennedy, J.). Second, the court held that Section 502(e) does not prevent state courts from adjudicating claims of ERISA-preemption (at least when raised in suits brought by parties other than fiduciaries, participants, and beneficiaries), and thus from affording a "plain, speedy and efficient remedy" to parties raising such claims against the assessment or collection of a state or local tax. Pet. App. 9-10.[2] The Seventh Circuit has recently agreed with the Ninth Circuit that Section 502(e) neither constitutes an exception to the TIA nor bars a state court from affording an adequate remedy to a party challenging a state tax as preempted by ERISA. *Darne* v. *Wisconsin*, 137 F.3d 484, 489-490 (7th Cir. 1998).[3]

The decisions of the Seventh and Ninth Circuits conflict, however, with decisions of the Second, Fifth,

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[2] Two of the earlier Ninth Circuit decisions ultimately held that the ERISA plans, on whose behalf the suits were brought, did not have a "plain, speedy and efficient remedy" in state court. *Retirement Fund Trust*, 909 F.2d at 1272; *General Motors Corp.*, 815 F.2d at 1308. The Ninth Circuit reasoned that those ERISA plans were not the taxpayer and, therefore, could not bring a refund suit in state court in which a claim of ERISA preemption could be raised. Those cases nevertheless contribute to the conflict presented here because, like *Ashton* and the decision below, they also hold that Section 502(e) does not bar the state courts from adjudicating ERISA-related actions by parties not enumerated in that provision where state law permits such actions. See *General Motors*, 815 F.2d at 1308; *Retirement Fund Trust*, 909 F.2d at 1272.

[3] The Seventh Circuit issued its decision in *Darne* on February 23, 1998, after the filing of the petition for a writ of certiorari and the brief in opposition in this case.

and Sixth Circuits. See *Travelers Ins. Co.* v. *Cuomo*, 14 F.3d 708, 714 (2d Cir. 1993), rev'd on other grounds *sub nom. New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645 (1995); *Thiokol Corp.* v. *Department of Treasury*, 987 F.2d 376, 380-381 (6th Cir. 1993), cert. denied, 117 S. Ct. 2448 (1997); *E-Systems, Inc.* v. *Pogue*, 929 F.2d 1100, 1102 (5th Cir.), cert. denied, 502 U.S. 981 (1991). Those circuits have held that a party has no "plain, speedy and efficiency remedy"— indeed, no remedy at all—in state court to challenge a state tax as preempted by ERISA. The courts have reasoned that Section 502(e) vests the federal courts with exclusive jurisdiction over any suit to enjoin violations of ERISA, and consequently that the "[s]tate courts lack jurisdiction to decide * * * whether ERISA preempts [a state tax]." *E-Systems*, 929 F.2d at 1102. "It necessarily follows," in those courts' view, "that there can be no effective state remedy under the Tax Injunction Act" for an ERISA-preemption claim. *Ibid.*[4] Those courts therefore have had no occasion to reach the other part of the *Franchise Tax Board* inquiry: whether Congress intended Section 502(e) of ERISA to create an exception to the TIA even assum-

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[4] Accord *Thiokol*, 987 F.2d at 379 (employers asserting ERISA-preemption challenge to state tax had no "plain, speedy and efficient state remedy," within the meaning of the TIA, because Section 502(e)'s "express grant of exclusive jurisdiction to the federal courts divests state courts of jurisdiction to hear claims *brought under ERISA*") (citing *E-Systems*); *Travelers*, 14 F.3d at 714 (ERISA plan fiduciaries had no "plain, speedy and efficient" remedy in state court to challenge state tax as preempted by ERISA, because Congress, in Section 502(e), "divested the state courts of jurisdiction over such claims") (citing *E-Systems* and *Thiokol*).

ing, *arguendo*, that a "plain, speedy and efficient remedy" exists in state court to challenge the state tax.

In this case, the Ninth Circuit explicitly declined to follow *E-Systems*, *Thiokol*, and *Travelers*, concluding that those cases "rest on reasoning which is in conflict with the law of this circuit." Pet. App. 7. And subsequently in *Darne*, the Seventh Circuit, after observing that the question whether federal district courts may adjudicate ERISA-preemption challenges to state taxes notwithstanding the TIA "has divided the circuits," stated that it would follow the Ninth Circuit's reasoning, rather than that of *E-Systems*, *Thiokol*, and *Travelers*. 137 F.3d at 489-490. We therefore agree with petitioner that a circuit conflict exists on whether Section 502(e) of ERISA precludes state courts from affording a "plain, speedy and efficient remedy" to a party who claims that a state or local tax is preempted by ERISA. See *Barnes* v. *E-Systems, Inc.*, 501 U.S. 1301, 1302-1303 (1991) (Scalia, J., in chambers) (noting "apparent conflict" between Fifth and Ninth Circuits on whether TIA "appl[ies] to state taxes that violate ERISA"). While no circuit conflict has yet arisen on the second part of the *Franchise Tax Board* inquiry—whether "Congress intended § 502 of ERISA to be an exception to the [TIA]," 463 U.S. at 20 n.21[5] — both issues concern the

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[5] The Seventh and Ninth Circuits have held that Section 502 does not carve out an exception to the TIA. Pet. App. 6-7; *Darne*, 137 F.3d at 489. The Second, Fifth, and Sixth Circuits had no occasion to reach that question, because they held that ERISA-preemption claims may proceed in federal court under the first part of the *Franchise Tax Board* inquiry, *i.e.*, that "state law provided no 'speedy and efficient remedy,'" 463 U.S. at 20 n.21.

same ultimate question of district court jurisdiction in cases such as this one, and thus are so closely related that they should be considered together.

2. The court of appeals correctly upheld the dismissal of petitioner's suit as barred by the TIA. Nothing in the text or legislative history of ERISA cross-references the TIA or otherwise indicates an intent to except from the TIA suits seeking to "enjoin, suspend or restrain the assessment, levy or collection of any tax" on the ground that it is preempted by ERISA. Accordingly, as the Seventh and Ninth Circuits have held, no reason exists to conclude that ERISA, or Section 502(e) in particular, creates an exception to the TIA. Pet. App. 6-7; *Darne*, 137 F.3d at 489; *Ashton*, 780 F.2d at 821-822. That conclusion is confirmed by Section 514(d) of ERISA, 29 U.S.C. 1144(d), which provides that "[n]othing" in ERISA "shall be construed to alter, amend, modify, invalidate, impair, or supersede *any* law of the United States" (emphasis added), which necessarily includes the TIA.

The Seventh and Ninth Circuits also correctly held that Section 502(e) of ERISA does not preclude state courts from affording a "plain, speedy and efficient remedy" to a party who challenges a state or local tax as preempted by ERISA. Contrary to the view of the Second, Fifth, and Sixth Circuits, Section 502(e) does not provide that "only an ERISA participant, beneficiary or fiduciary may bring a claim of ERISA preemption, and then only in federal court." Pet. App. 9. Section 502(e) vests federal district courts with exclusive jurisdiction only over certain claims: those brought pursuant to Section 502(a) itself by the Secretary of Labor or ERISA plan fiduciaries, participants, or beneficiaries. The preemption claim

brought by petitioner as a plan fiduciary pursuant to Section 502(a)(3) could thus be brought as such only in federal court, if at all. As the Ninth Circuit recognized (Pet. App. 9-10), however, that does not end the matter, because a similar action brought by another entity—such as the joint venture as the taxpayer here—would not be barred by ERISA. Section 502(e) would not preclude the joint venture (or, for that matter, the plan itself) from suing in state court to defeat its tax obligation on the basis of ERISA preemption.

3. This Court has repeatedly noted, but declined to decide, whether a party may, notwithstanding the TIA, seek declaratory or injunctive relief in federal district court challenging a state tax as preempted by ERISA.[6] Several of this Court's decisions are consistent, however, with the Seventh and Ninth Cir-

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[6] In *Franchise Tax Board*, 463 U.S. at 20 n.21, the Court stated that it was "express[ing] no opinion" on whether an ERISA plan "could sue under ERISA to enjoin or to declare invalid a state tax levy, despite the Tax Injunction Act." In *New York State Conference of Blue Cross & Blue Shield Plans*, *supra*, the Court addressed on the merits the claims of ERISA plan fiduciaries that state taxes were preempted by ERISA. The Court noted that the parties had not challenged, and that it therefore would not review, the lower courts' holding that injunctive relief was not precluded by the TIA. 514 U.S. at 652-653 n.4. And in *De Buono* v. *NYSA-ILA Medical & Clinical Services Fund*, 117 S. Ct. 1747, 1750 n.5 (1997), where the TIA issue had not been raised in this Court or squarely decided by the courts below, the Court "presume[d]," without deciding, that the court of appeals had correctly resolved the TIA issue in favor of federal court jurisdiction. Justice Scalia, joined by Justice Thomas, dissented on the ground that the Court should have first decided that threshold issue, "whether or not it has been preserved by the parties," before proceeding to the merits. *Id.* at 1753-1754.

cuits' position that Section 502(e) does not deprive a party of a "plain, speedy and efficient remedy" in state court to assert an ERISA-preemption challenge to a state or local tax.

The Court has assumed, albeit in cases where ERISA-preemption claims were raised defensively, that such claims may be adjudicated in state court. In *Franchise Tax Board*, state tax authorities brought an action in state court against an ERISA plan and its trustees, seeking to secure compliance with tax levies imposed on the plan and to obtain a declaratory judgment that the tax levies were not preempted by ERISA. After concluding that the case had been improperly removed to federal court by the plan and its trustees, the Court directed that the case be remanded to the state court to consider, *inter alia*, the ERISA-preemption issue on which the state tax authorities had sought a declaratory judgment. 463 U.S. at 27-28; see also *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988) (affirming on the merits the Georgia Supreme Court's resolution of ERISA plan trustees' defense that state garnishment statutes were preempted by ERISA).

Moreover, in rejecting the ERISA plan's contention in *Franchise Tax Board* that the state tax authorities' request for a declaratory judgment on the ERISA-preemption issue came within the exclusive jurisdiction of the federal courts under Section 502(e), the Court explained that "ERISA carefully enumerates the parties entitled to seek relief under § 502," including those entitled to sue for "a declaratory judgment on the issues in this case," such as ERISA preemption. 463 U.S. at 27. The Court added that "[a] suit for similar relief by some other party does not 'arise under' that provision." *Ibid.* The

Court's statements suggest that, although only parties enumerated in Section 502 (*e.g.*, fiduciaries) may seek declaratory or injunctive relief "under" Section 502 on the ground that a state law is preempted by ERISA, "other part[ies]" are not precluded from asserting "similar" claims outside the enforcement scheme created by Section 502.

This Court's opinion in *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983)—issued on the same day as *Franchise Tax Board*—also assumes that a party may assert an ERISA-preemption claim independent of Section 502. In *Shaw*, the Court affirmed a district court's jurisdiction over an action by employers, who are not among the parties enumerated in Section 502(e), contending that a state anti-discrimination law was preempted by ERISA. The Court noted that the action, as one "seek[ing] injunctive relief from state regulation, on the ground that such regulation is preempted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail," presented "a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve." 463 U.S. at 96 n.14. The Court thus appeared to recognize that a party that is not an ERISA fiduciary, participant, or beneficiary may assert an ERISA-preemption claim outside the jurisdictional framework of Section 502 of ERISA. While the jurisdictional basis in *Shaw* was 28 U.S.C. 1331, which permitted the suit to proceed in federal court, the jurisdictional basis could also be provided by state law, such as a statute under which a taxpayer could seek a refund of state taxes on the ground that the assessment of the taxes was preempted by ERISA.

4. The interrelated questions whether Section 502(e) of ERISA creates an exception to the TIA, and

whether Section 502(e) prevents state courts from deciding ERISA-preemption claims and thus from providing a "plain, speedy and efficient remedy" under the TIA, are important and recurring, and therefore warrant this Court's resolution. The Court has three times noted but declined to decide these questions. As Justice Scalia has observed, "[t]he establishment of an ERISA exception to the Tax Injunction Act is alone a matter of some importance to the States," and it is even more important when based on the ground that "ERISA forbids [state courts'] consideration of ERISA pre-emption challenges," whether to state or local taxes or to other sorts of statutes, regulations, and ordinances. *Barnes*, 501 U.S. at 1303. The issue is also one of considerable importance to the federal courts, which, under the construction of Section 502(e) adopted by the Second, Fifth, and Sixth Circuits, would become the sole forum for adjudicating many ERISA-preemption claims.

The circuit conflict presented by this case has deepened, moreover, since the petition for a writ of certiorari was filed in *Barnes*. While the conflict then involved only the Fifth and Ninth Circuits, the conflict now extends to three additional circuits, two of which have sided with the Fifth Circuit and one with the Ninth Circuit. See pages 7-9, *supra*. Certiorari therefore should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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